IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 258 of 2006
Date of decision 13 .8 .2007

The Commissioner of Income Tax, Karnal .. Appellant

Versus

Mrs. Anju Bhayana .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Yogesh Putney, Advocate for the petitioner
Mr. S.K.Muklhi, Advocate with
Mr. Rajiv Sharma, Advocate for the respondent

M.M.Kumar, J.

The Revenue has approached this Court by filing the instant appeal under Section 260-A of the Income Tax Act, 1961 (for brevity 'the Act') challenging order dated 10.11.2004 passed by the Income Tax Appellate Tribunal, New Delhi Bench 'E' (for brevity 'the Tribunal') in ITA No. IT/S&S/A. No.28/DEL/2000 for the block period 1988-89 to 1998-99. It has been claimed that the following substantive questions of law would arise for our determination:

> "1. Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in confirming the order of the CIT(Appeals) in deleting the addition of Rs. 206083/- made by the Assessing Officer on account of unexplained investment in FDRs/valuables found at the residential premises of the assessee during search and which are in the names of wife, mother and children of the deceased assessee whereas the wife and the mother had denied any investment in such valuable

during their respective statements recorded during search except admission of FDRs of Rs.10,000/- by Smt. Anju Bhayana wife of the deceased assessee?

2.Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in confirming the order of the CIT(Appeals) in deleting the addition of Rs.50000/- in asstt. Year 1997-98 made by the Assessing Officer on the basis of page no.1 to 14 of seized document no. A-10 containing applications addressed to HUDA, affidavit, agreement, original conveyance deed and general power of attorney in respect of plot no.188, Sector 11-12 , HUDA, Panipat given by Smt. Shakuntala Aggarwal in favour of Sh. Ashok Kumar deceased when it is evident that the aforesaid property was purchased by Sh. Ashok Kumar (deceased) on the basis of Power of Attorney;

3.Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in confirming the order of the CIT(Appeals) in deleting the addition of Rs.490699/- in block period (1988-89 to 1997-98) made by the AO on the basis of facts gathered during search operations u/s 132 of the Act at the residential premises of the assessee inter alia including payment of heavy amounts towards LIC premia, educational expenses, and telephone bills by the assessee whereas showing very nominal amount of household withdrawals, as indicated by the document no. A-II seized during search operations."

We have perused the impugned order with the assistance of the

learned counsel and find that findings of fact have been recorded to repel the ground of addition. It has been found as a fact that there was no material or occasion for the Assessing Officer to presume that the assessee was the real beneficiary or owner of the deposits which were in the name of his wife and mother who were alleged to be benamidars. The onus was on the Revenue to prove that the assessee was the real owner of these fixed deposits and investments which remained unsubstantiated. Likewise, the statement of affairs filed by the assessee was accepted and his plea that a sum of Rs.14,600/- have been found at the time of search belonged to the 'cash available in hand' which was depicted in the statement of affairs. The Tribunal recorded a categorical finding that the statement of affairs could not have been rejected by the Assessing Officer merely on the ground that it was prepared in accordance with the convenience of the assessee which explained various assets found at the time of search.

The only argument raised by Mr. Yogesh Putney, learned counsel for the Revenue is that the statements recorded during search under Section 132(4) of the Act have not been considered by the Commissioner of Income Tax (Appeals) nor by the Tribunal. However, the afore-mentioned statement has been controverted by Mr. S.K.Mukhi, learned counsel for the assessee by referring to paras 4.1(b),(c) and (d) of the order passed by the Commissioner of Income Tax (Appeals), Rohtak and the findings recorded thereon in paras 4.3, 4.7 and the concluding para 10.2. He also pointed out various paras of the order passed by the Tribunal and urged that whole evidence has been taken into account.

After thoughtful consideration of the submissions made by the learned counsel for the parties, we are of the view that there are findings of

fact recorded by both the authorities below and those findings cannot be over-turned by this Court in exercise of jurisdiction under Section 260 A of the Act by re-appreciating evidence. It is well settled that on the basis of evidence available on record one person may take one view whereas another person may be able to take a different view but that would not constitute a basis for reversing the finding by re-appreciating evidence. Therefore, there is no room for interference in the impugned order and the appeal deserves to be dismissed as no question of law much less a substantial question of law would arise.

For the reasons stated above, this appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

13.8.2007
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